IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.29942-M of 2005

Date of Decision: March 13, 2007

Gurinder Kaur and another

...Petitioners

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.S.Bains, Advocate,
for the petitioners.

Mr.J.S.Chandail, AAG, Punjab,
for the State.

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RANJIT SINGH, J.

The petitioners, who stand summoned to face trial with other co-accused under Section 319 Cr.P.C., have filed this petition impugning the said order.

Kamaljit Kaur wife of Surjit Kumar committed suicide by consuming sulphos tablets on 27.6.2002. She was married to Surjit Kumar in the year 1991. At the time of her death, Surjit Kumar, her husband, was in Dubai. The

other members of the family made an attempt to save the wife-deceased by taking her to the hospital, but she could not be saved. FIR in this regard was registered on 27.6.2002 under Section 306 IPC on the complaint filed by father of the deceased. It is not a case of demand of dowry and hence no allegations under Section 304-B IPC are made. The grievance is made against the mother-in-law Chanan Kaur, father-in-law Jai Ram, brother-in-law Parminder Singh and his wife Gurinder Kaur. Parminder Singh and Gurinder Kaur were married in the year 1998, i.e., seven years prior to the marriage of the deceased, but are named in the FIR. During the course of investigation, father-in-law Jai Ram gave a representation that he was suffering from paralysis for about ten years and as such could not have been responsible for allegation of abetment of suicide of her daughter-in-law. Similarly, Gurinder Kaur, petitioner No.1, pleaded that she was younger daughter-in-law and as such could not be expected to behave in a manner, which could have abetted the deceased to commit suicide. D.S.P.(Rural), Hoshiarpur, after holding enquiry, found that both the petitioners, i.e. Gurinder Kaur and Jai Ram were un-necessarily and falsely named. Ultimately challan was presented only against mother-in-law Chanan Kaur and brother-in-law Parminder Singh. The trial thereafter followed. While appearing as PW-1, Lashkar Singh has made material improvement and has come out with a changed version saying that his deceased daughter was forced to consume the tablets. On the basis of statement made by PW-1, the prosecution moved an application dated 14.2.2005 for summoning the petitioners as additional accused. The said application was allowed and the petitioners have been summoned to

face trial. Aggrieved against this order, the petitioners have filed the present petition.

Notice was issued in this case and the reply is filed. In the reply, it is mentioned that petitioners are rightly summoned as there are specific allegations made against them by the witness.

The counsel for the parties have been heard.

Mr.R.S.Bains, the counsel appearing for the petitioners, submits that PW-1 Lashkar Singh has made major improvements in his statement before the court and as such his version should not be taken reliable to summon the present petitioners. In addition, the counsel also submits that even after taking into account this improved version, no case for summoning the petitioners under Section 319 Cr.P.C. is made out as per the standard laid down by the Hon'ble Supreme Court in different cases. In this regard, the counsel has referred to the decision dated 19.10.2006 in S.L.P.(Crl.) 1590 of 2005 (***Anil Singh Vs. State of Bihar).*** The Hon'ble Supreme Court in this case observed that court at this stage is not to enter into merit of the matter and that its opinion in the nature of things would be, *prima-facie,* one. The Hon'ble Supreme Court has given a word of caution by saying that the court must also consider that the innocent persons may not be prosecuted and a balance is required to be maintained. It is further held that the court must pose unto itself a right question that it is required to scrutinize the material more closely and further that power under Section 319 Cr.P.C. is not to be exercised in mechanical manner.

It is true that a person cannot be summoned to face prosecution merely because some evidence is brought on record

against him. In fact relevant guidelines in this regard have been laid down by Hon'ble Supreme Court in ***Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr., 2000(2) R.C.R.(Criminal) 75.*** As held in this case, the court has a discretionary power to summon a person as an additional accused to stand trial, but it is not to be exercised on the ground that the court entertained some doubt about his involvement in the offence. To summon a person to face trial under Section 319 Cr.P.C., the court must have reasonable satisfaction from the evidence already collected. The Hon'ble Supreme Court in this regard observed as under:-

> "The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried along with the already arraigned accused."

In Michael Machado's case (supra), the Hon'ble Supreme Court further held that unless the court is hopeful that there is reasonable prospects of the case as against newly brought accused

ending in conviction of the offence concerned, the court should refrain from adopting such a course of action.

Testing the evidence on the basis of requirement, as afore-mentioned, it may be seen whether the petitioners are rightly summoned or not. The perusal of the evidence given by PW-1 Lashkar Singh, annexed as Annexure P-6, would show that the role attributed to the present petitioners is almost identical to the one, who are facing trial. It would be fair to say that there is a reasonable prospect of a case standing against the present petitioners. It can also be said that there are allegations against the petitioners for having committed an offence and that they can be tried for these offences alongwith the accused already arrayed. No infirmity, accordingly, is noticed in the impugned order.

The present petition is, thus, dismissed.

March 13, 2007 (RANJIT SINGH)
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